

UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS

**OVERSIGHT HEARING**

to receive testimony on the goals and priorities of the member tribes of the  
Midwest Alliance of Sovereign Tribes/  
Intertribal Bison Cooperative  
for the 107th Congress

June 19,2001

**Testimony of the  
Sault Ste. Marie Tribe of Chippewa Indians  
Concerning Natural Resource Issues**

Mr. Chairman, distinguished members of the Committee, my name is Aaron Schlehuber, an attorney for and member of the Sault Ste. Marie Tribe of Chippewa Indians. The Sault Tribe, for itself and behalf of the other MAST tribes, wants to share with you some concerns in the area of natural resources.

Many MAST tribes, including the Sault Tribe, are located on the shores of one of the most precious natural resources on the planet – the Great Lakes, which hold about 20% of our fresh water. Many MAST tribes, like us, have a unique interest in this resource, because we possess treaty fishing rights in various portions of the Great Lakes. Five Michigan tribes, including the Sault Tribe, have rights in portions of Lakes Superior, Michigan, and Huron under an 1836 treaty. Other tribes, in Minnesota and Wisconsin, have fishing rights in Lake Superior under treaties signed in 1842 and 1854. These rights have been recognized and exercised for many years. They remain an important source of livelihood and subsistence for tribal members, as well as a connection to the wellspring of our traditional culture.

Last year the treaty tribes of Michigan concluded a 20 year agreement with the state and federal governments on the exercise of treaty fishing rights and on fisheries management on the Great Lakes. Recreational fisher groups, the Michigan Chamber of Commerce, and other interested groups participated in the negotiations, and all governments and user groups who share the resource supported the accord. Today, however, this careful balancing of interests is threatened by environmental impingements on the fishery. The fishery resource is imperilled on a number of fronts: threatened water diversion, lateral drilling, polluted sediment, tainted fish, continuing point source pollution, to name a few. Some of these issues are addressed in the written materials submitted with this statement. But today, in the short time allotted, we want to flag one crucial problem, one created by the federal government that the federal government up to now had done little to help solve: the introduction of exotic(non-indigenous or non-native) species.

The St. Lawrence Seaway was undoubtedly an economic boon to the Great Lakes basin. But it opened up an avenue for the invasion of many exotic species (and human pathogens as well). A Great Lakes Fishery Commission study shows that at least 136 exotic species have invaded the Great Lakes, and that 10% of these have had serious impacts. The most infamous of the invaders is the sea lamprey, which wreaked havoc on native fish stocks, especially lake trout. Five decades later, despite a massive control effort, the lamprey remains a serious threat to native fish species and an expensive pest to control.

A primary vector for the introduction of exotic species is the ballast waters of “salties,” ocean-going vessels that enter the Great Lakes. Foreign species are picked up for the ride when these ships take in ballast water and are dropped off in the Great Lakes when the ballast water is discharged. Ballast water has been the culprit in introducing a number of exotics. The most recent example is the zebra mussel, which is rapidly changing lake ecology by coating the lake bottom, disrupting the food web, displacing native species, and filtering out nutrients upon which other species depend.

Zebra mussels have been implicated in a disturbing recent development: the rapid decline – in some areas, the total disappearance – of *Diporeia* for Lakes Michigan and Huron. This small bottom dwelling organism was an abundant and essential food for whitefish and other major species, a key link in the lake food chain. Its decline threatens to produce a sharp decline in the fishery, perhaps an ecological disaster.

The federal response to the ballast discharge problem to date has been at best delay and temporizing. The EPA continues to ignore its responsibility to regulate ballast water discharge. After a decade of study, the Coast Guard has only recently published for comment a statement of suggested approaches to setting ballast water standards, a long march from actual regulation. This despite the fact that Congress mandated regulations several years ago in the National Invasive Species Act. It appears that the powerful shipping industry has thus far succeeded in thwarting any meaningful regulation of ballast discharge.

Congress must step in and deal forcefully with this issue. Fortunately, within the last several weeks there has been bipartisan movement on this issue. Rep. Hoekstra (R-MI) has introduced H.R. 1680, and Sen. Stabenow has introduced S. 1034 (last week). These twinned bills have each garnered 12 cosponsors, including Sen. Wellstone of this Committee. The bills would require the promulgation of Coast Guard regulations which would assure that vessels entering the Great Lakes do not discharge ballast water that introduces or spreads nonindigenous aquatic species and that ballast water and its sediments be treated by the most effective techniques now available and to be developed in the future. We urge the members of this Committee to support that legislation. The cost of failing to control the introduction of exotics is staggering. This includes direct federal outlay, as in the lamprey control effort. It also involves indirect, more local costs, such as the need to continually clean municipal water intake pipes, or the need to remove manually the purple loosestrife that threatens to choke wetlands. The shipping industry has evaded controls which would have come long ago in another context. Ask yourselves this question: If there were an oil or chemical spill on the Great Lakes that caused even a fraction of the harm caused by exotics, how would federal regulators and Congress have

responded?

In the treaties of 1836, 1842, and 1854, the federal government promised various tribes that their right to commercial and subsistence fishing in the Great Lakes would continue. A century later, the federal government opened a broad avenue for invasion of the Great Lakes by harmful exotic species, and that invasion threatens the fishing rights secured by treaty. The federal government has a clear responsibility to end the threat and clean up the damage done. This is a duty owed the treaty tribes and all citizens of the Great Lakes basin.

## **NATURAL RESOURCES LEGISLATION OF INTEREST TO MAST TRIBES**

### ***Ballast Water***

Great Lakes Ecology Protection Act

#### **HR 1680**

introduced by Rep. Hoekstra on 5/3/01

12 cosponsors (MI -Barcia, Ehlers, Rogers, Upton, Camp, Stupak)

House Transportation and Infrastructure No committee action yet

#### **S 1034**

introduced by Sen. Stabenow on 6/13/01

12 cosponsors (MI -Levin)

Commerce, Science and Transportation

No committee action yet

These bills require the issuance of Coast Guard regulations under the National Invasive Species Act to assure that vessels entering the Great Lakes do not discharge ballast water that introduces or spreads nonindigenous aquatic species and to treat ballast water and its sediments through the most effective and efficient technologies available, now and in the future. The house bill would require publication of proposed regulations within 120 days of passage and final regulations within 270 days of passage, to be followed by regulations concerning innovative technologies within 720 days of passage. The Senate bill is similar to the House bill, but the text is not yet available for comparison.

The importance of these bills to the tribes is discussed in the testimony.

## ***Conservation Funding***

Conservation and Reinvestment Act (CARA)

### **HR 701**

introduced by Rep. Don Young on 2/14/01

196 cosponsors (MI -Bonior, Kildee, Levin, Barcia, Camp, Conyers, Dingell, Ehlers, Upton)

Resources

no committee action yet

no similar bill has been introduced in the Senate

This bill was introduced last year and passed the House by a wide margin in May 2000, and made it through committee in the Senate, but it was blocked from the Senate floor and died. The legislation would be the largest conservation funding measure in history .It takes offshore oil and gas leasing revenues, about \$3 billion per year, and spends the revenues on a variety of conservation measures across the country .A watered down version of CARA, "CARA Lite" was passed last year, but all tribal allocations were stripped from it, leaving tribes with nothing for their conservation needs.

This year's house bill incorporates the proportional funding for tribes that was stripped out last year. For example, under the bill 2.25% of the wildlife conservation and restoration funds would be set aside for tribes. This is proportional funding because it is derived from the ratio of federal Indian trust lands to the total land area of the United States.

This legislation is crucial to most MAST tribes, which have extensive resource management responsibilities over reservation lands and fisheries resources. These functions benefit non-Indian visitors to reservations or users of the Great Lakes as well as tribal members. Some unique ecosystems are within tribal lands and are managed for the benefit of all, such as the Kakagon Sloughs on the Bad River Reservation in Wisconsin and the Red Lake area on the Red Lake Reservation in Minnesota. The proportional funding approach in the House bill would at last provide management and restoration funds to tribes proportional to the tribes' responsibilities.

Last year there were a number of differences between the House and Senate bills, and substantial changes affecting tribes were made during the legislative process. Tribes want CARA to be enacted, and to include the funding allocations to tribes commensurate with their need and responsibility.

## ***Safe Drinking Water***

### Small Community Drinking Water Funding Act

#### **S 503**

introduced by Sen. Reid on 3/9/01

9 cosponsors (MI -Stabenow)

Environment and Public Works

no committee action yet

#### **HR 1178**

introduced by Rep. Jim Gibbons on 4/2/01

14 cosponsors (MI -Stupak)

Energy and Resources

no committee action yet

These identical bills would amend the Safe Drinking Water Act to add an EP A program to assist small communities in meeting the applicable national primary drinking water standards at reasonable cost. A separate section of the bill governs grants to Indian tribes, and 3% of the total funding available is allocated to the tribal program.

Small rural communities have struggled with the problem of providing safe drinking water at a reasonable cost. The problems are especially acute for some tribal communities, which are in remote areas and have difficult and costly infrastructure problems. This bill would help tribes and other small communities to provide safe drinking water.

## ***Great Lakes Sediment Pollution***

Great Lakes Legacy Act

### **HR 1070**

introduced by Rep. Ehlers on 3/15/01

2 cosponsors(MI -Barcia)

Transportation and Infrastructure and Science

no committee action yet

no comparable bill in the Senate

This bill would amend the Water Pollution Control Act to authorize EP A to make grants for the monitoring, evaluation, and remediation of sediment contamination in the Great Lakes. The bill requires a non-federal match of at least 35% (in-kind included). Indian tribes are eligible for grants.

There is a particular problem with sediment contamination in the Great Lakes, and especially in Lake Michigan, which is a human health issue. Contamination of the lakes by PBBs, PCBs, dioxin, metals, and other harmful substances has led to contamination of fish in the lakes. This has led to a series of consumption advisories on popular sport fishing species like salmon and lake trout and primary commercial species, including whitefish and lake trout. Considerable progress has been made in reducing the sources of these contaminants. However, these contaminants persist in the environment and are contained in the sediment on the lake bottoms, where they reenter the food chain when the sediment is disturbed.

The problem here is similar to that of exotic species and ballast water. It is not sufficient to eliminate the source of future contamination. It is also necessary to deal with the problem of the legacy of past pollution. This bill addresses that issue.

The issue is one of particular importance to treaty fishing tribes. Just as exotic species pose a threat to the fishery, so too does sediment pollution. Dealing with this problem would help to assure that fish caught for commercial, subsistence, and recreational purposes would be a wholesome food source that can be enjoyed by the generations to come.

## ***Great Lakes Oil and Gas Drilling***

### **S 1033**

introduced by Sen. Stabenow on 6/13/01

12 cosponsors (MI -Levin)

Environment and Public Works

no committee action yet

### **HR 2167**

introduced by Rep. Bart Stupak 6/13/01

31 cosponsors (MI -Bonior, Conyers, Barcia, Dingell, Kildee, S. Levin)

Resources

no committee action yet

These identical bills would prohibit any drilling activity, including slant or directional drilling, to extract oil or gas from submerged lands in any of the Great Lakes until a study on such drilling has been completed by the National Academy of Sciences on the environmental impact of such drilling.

All eight states bordering the Great Lakes prohibit offshore drilling from rigs in the Great Lakes. Michigan, however, allows drilling for oil and gas underlying the Great Lakes from on-shore wells (slant or directional drilling). A few permits for such drilling have been issued in Michigan, and the state is considering issuing additional permits.

The consequences of a mishap from such drilling could be disastrous to the fishery and the ecosystem. It is prudent to study the issues before such drilling is allowed.



***Fisheries Habitat***

Fishable Waters Act

**S 678**

introduced by Sen. Bond

1 cosponsor

Environment and Public Works

no committee action yet

**HR 325**

introduced by Rep. Tanner

27 cosponsors (MI -Dingell)

Transportation and Infrastructure and Resources

no committee action yet

These bills, which are similar but not identical, would amend the Water Pollution Control Act to establish an Interior program of grants to states to carry out approved fisheries habitat protection, restoration, and enhancement program. Tribes are treated as states for purposes of funding eligibility.

## **Great Lakes Resource Protection**

### **S 1035**

introduced by Sen. Stabenow on 6/13/01

8 cosponsors (MI -Levin)

Banking, Housing and Urban Affairs

no similar bill in the House

This is a bill to establish programs to protect the resources of and areas surrounding the Great Lakes. It was just introduced and the text is not available through Thomas yet.